IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

WP(C).No. 27321 of 2007(C)

OS.405/2005 of PRL.M.C.,ERNAKULAM
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PETITIONER:

VIJAYALAKSHMI, AGED 51,
W/O M.K.REGHU, VIJAYA NIVAS,
KODAMKULANGARA, TRIPUNITHURA P.O.

BY ADV. SRI.S.SREEKUMAR
SRI.P.MARTIN JOSE

RESPONDENTS:
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1. **NANDANAN, S/O LATE MR.KITTU,**
   AGED 65, THOPPIL, KODAMKULANGARA,
   TRIPUNITHURA P.O.

2. **KOMALAM, W/O LATE MR. CHANDRAN,**
   THOPPIL, KODAMKULANGARA, TRIPUNITHURA P.O.

3. **PADMAJA, D/O LATE RAMAN MENON,**
   LAKSHMI NIVAS, KODAMKULANGARA,
   TRIPUNITHURA P.O.

4. **RADHA, W/O PRASAD, LAKSHMI NIVAS,**
   KODAMKULANGARA, TRIPUNITHURA P.O.

5. **JAYA, W/O RAJAN,**
   KODAMKULANGARA, TRIPUNITHURA P.O.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

M.N.KRISHNAN, J

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W.P.(C) No.27321 OF 2007

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Dated this the 13th day of September 2007

JUDGMENT

This writ petition is filed to set aside Ext.P9 order passed by the Prl.Munsiff, Ernakulam in I.A.No.5974 of 2005 in O.S.405 of 2005. The court held that if it is necessary, it will order so during the course of trial. To start with when the plaintiff filed an application for appointment of a Commissioner and it was allowed, defendants filed a work memo for measuring their property also with respect to their title deeds. But, unfortunately they did not press it. Later, the plaintiff moved an application to give a direction to the Commissioner to measure defendants' property but it was dismissed. The court also observed that "if during the course of trial, if this court finds any such direction should be given proper orders will be passed". Learned counsel for the petitioner submits before me that the plaintiff as well as the defendants are claiming title over the disputed property, I am conscious of the fact that the suit is filed by the plaintiff and the burden is on the plaintiff to establish his title and he cannot expose weakness of the defendants to get a relief in his favour. But in a suit relating

to immovable properties where both parties claim title by virtue of documents, it is only just and desirable that the properties are measured with respect to the title deed of the plaintiff as well as the defendants so that the court will get a clear picture. The observation of the court below that it will consider such a prayer at appropriate stage may not be fully correct for the reason that it will be highly belated at that stage. When the properties have to be identified with respect to the title deeds, that too, with the assistance of a Taluk Surveyor it is really necessary to be done before the trial begins so that any party aggrieved by the report of the Commissioner can file applications to redress his grievance. But if it is to be considered during the course of trial, it will cause embarrassment and result in protraction of the trial and it may amount to a piecemeal trial. Since both the parties want the properties to be identified with respect to their title deeds, it is only just and correct to remit the Commissioner's plan and report to the same Commissioner for identifying the property with respect to the title deeds. I make it clear that the parties can file work memo before the Commissioner for the points which they want to note. Needless to say that the plaintiff has to bear the initial expenses for the Commissioner as well as the Taluk Surveyor. It is also made clear that the trial can be proceeded only after receipt of the Commissioner's report and after giving opportunity to the

parties to file objections to the report.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-